

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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Wilmington, Delaware 19801-3733
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Submitted: January 30, 2007
Decided: April 19, 2007

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RE: State of Delaware v. Russell Teeter
ID# 0605000566

Upon Defendant's Motion for Modification of Sentence: GRANTED

Dear Counsel:

As counsel is aware, the driving force behind the Court's decision to impose as a condition of probation that probationer wear a t-shirt while on the premises of

his family-owned business with “large print identifying...[him] as a registered sex offender,” was “to protect the public.”¹

The probationer and his wife own a horticulture business. On at least one occasion, probationer exposed himself to one of his customers while the customer was putting her child in the car.² Children often come onto the business premises with their parents, and the probationer admitted in the past to exposing himself at least twice a day to children on his premises.³ Given that (1) defendant’s criminal history includes 7 prior convictions for indecent exposure,⁴ (2) he has psychological problems,⁵ (3) many of his victims were children of his business customers, and (4) probationer exposed himself repeatedly on the business premises, the Court endeavored to craft a sentence that would protect members of the public, particularly children, entering upon the defendant’s business premises.

As the Court noted at the time of sentencing:

...[the probationer] states he had been out of control, exposing himself...all his life. He admits to exposing twice per day to children of age six to high school age from his greenhouse. So what we have is...innocent members of the public, coming on to this premises, and it’s like a fishing hole. He’s just there...picking out who he wants, and I don’t know what to do to protect the public that is lured onto this premises with a convicted sex offender....⁶

¹ Def. Br., D.I. 17, Ex. A, at 20:13.

² *Id.* at 8.

³ State’s Answ. Br., D.I. 22, at 2.

⁴ *Id.*

⁵ Def. Br., D.I. 17, at 5.

⁶ Def. Br., D.I. 17, Ex. A, at 11:13-22.

Because probationer's business requires his involvement on a daily basis, the Court was reluctant to prohibit him from working there. On the other hand, the Court did not want him to use the business to attract potential victims. The Court recognized at the time of sentencing that requiring the probationer to wear the sex offender t-shirt might "kill the business."⁷ The Court did not recognize at the time of sentencing that requiring the probationer to wear the t-shirt would subject him to risk of serious physical injury or death.

Following the Court's imposition of the sentence, the *News Journal* published the probationer's name, photo, and location of his business. Comments submitted online by members of the public in response to the article leave no doubt in the Court's mind that probationer's compliance with the t-shirt condition places him in danger. The Court did not foresee the virulent threats against the probationer posted online or the risk of danger posed by the publication of the probationer's identity, photograph, and whereabouts. Although the t-shirt condition was imposed in an effort to protect the public, as a result of the attendant publicity, it makes the defendant a target and unreasonably subjects him to the risk of vigilante justice, including serious physical injury, and possibly even death. This consequence was unforeseen, unintended, and is not consistent with the purpose of probation.

⁷ *Id.* at 16:9-10.

Given all the circumstances, the risk of danger posed by the t-shirt condition is not consistent with the interests of justice.⁸ Consequently, the Court modifies the probationer's sentence to delete the t-shirt condition, and imposes instead the following special condition:

The defendant shall not enter his business premises during business hours or when customers are on the premises. He may perform his work duties on the business premises only before or after business hours and when no customers are on the premises.

This condition ensures the safety of the public but does not place the probationer in danger. And, because the probationer “does the growing” (which can be done anytime) and, by his own admission, his wife and employees can handle the customers, this condition will not work an economic hardship on him or his business.⁹

As noted above, given the threats of violence against the probationer and the attendant newspaper publicity which included the probationer's name, photo, and location of his business, the Court finds the t-shirt condition is unreasonable and therefore contrary to 11 *Del. C.* § 4204(m). In light of this determination, the Court need not address the probationer's arguments that the Court exceeded its

⁸ See 11 *Del. C.* § 4204(m)(emphasis added)(“As a condition of any sentence...the court may order the offender to engage in a specified act...as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender...or for any other purpose consistent with the interests of justice.”).

⁹ Def. Br., D.I. 17, Ex. A, at 10:8, 13.

authority or that the t-shirt condition violates the probationer's First Amendment rights.

IT IS SO ORDERED.

Jan R. Jurden, Judge